

MONTANA PUBLIC DEFENDER COMMISSION



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CHAIR

STATE OF MONTANA

January 11, 2013

Senator Terry Murphy
Chairman, Senate Judiciary Committee
Members Senate Judiciary

RE: Information about SB53

Mr. Chairman and Members of the Committee:

During the hearing on SB53 subjects arose about the ability of the courts to collect surcharges, fines, and costs assessed in a sentence if the potential for jail time is removed as proposed in SB53. Secondly, could the courts even assess surcharges if the potential for jail time is removed as proposed in SB53?

Submitted with this letter is a memorandum informing the committee that (1) Sec. 3-1-501(3), MCA, allows judges to hold people in contempt for disobedience of any lawful judgment, order, or process of the court that can be punished by incarceration if the judge desires and (2) by the terms of Sec. 46-18-236(2), MCA, it appears that the only prevention to assigning surcharges is a judge's decision not to impose a fine or costs.

The Public Defender Commission and OPD are available to provide information on any other subject and answer any other questions committee members may have.

Very truly yours,


Richard E. Gillespie
Chair, PDC

Disobedience of any lawful judgment, order, or process of the court may be punished as contempt of court. Sec. 3-1-501, MCA. Subsection 3 of 3-1-501 says:

(3) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in imposing the penalty is to punish the contemnor for a specific act and to vindicate the authority of the court. If the penalty imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can end the incarceration or avoid the fine by complying with a court order and is criminal if the contemnor cannot end the incarceration or avoid the fine by complying with a court order. If the court's purpose in imposing the sanction is to attempt to compel the contemnor's performance of an act, the court shall impose the sanction under 3-1-520 and may not impose a sanction under 45-7-309.

Nothing in 3-1-501(3) requires the court to have previously imposed, deferred or suspended a jail sentence. Thus, *a person who is not given some form of a jail sentence (imposed, deferred or suspended), and who fails without good cause to pay a fine or other costs imposed by the court upon sentencing, may be brought into court and may be jailed for the default.* A PD may be needed at that stage because of the possibility of incarceration then, but not at the initial stage because incarceration is not possible.

Nothing was found that says surcharges are or must be waived if the possibility of incarceration was not available at the initial stage. All courts must impose a surcharge on any person convicted for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable costs, fees, or fines. Sec. 46-18-236(1), MCA. Subsection (2) of 46-18-236 says:

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time,* the court shall waive payment of the charge imposed by this section.

Nothing in 46-18-236(2) requires the court to have previously imposed, deferred or suspended a jail sentence. Thus, *surcharges are not waived if a person is not given some form of a jail sentence, only if the person cannot pay fines or costs within a reasonable time.*

*A court may require a person convicted of a felony or misdemeanor to pay a fine and costs. The court may not do so if the person is unable to pay the fine and/or costs. Sec. 46-18-231, -232, MCA. Payment of a fine or costs can be made a condition of a deferred or suspended sentence. However, a suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment. Sec. 46-18-233, MCA.

At least some of the judges of courts of limited jurisdiction utilize a computer-based program, which automatically flags cases in which a defendant has not made payments on fines or costs ordered by the court. This "overdue processing" program automatically prints out a letter to the person in default, notifying that person that he or she will be required to appear in court and explain the purpose for the lack of payment. This program can also automatically send a notice to DMV for suspension of the person's driver's license.